



DEPARTMENT OF DEFENSE

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Office of the Secretary

32 CFR Part 65

[Docket ID: DOD-2009-OS-0021]

RIN 0790-AI43

Post-9/11 GI Bill

AGENCY: Office of the Under Secretary of Defense for Personnel and Readiness/Office of the Deputy Assistant Secretary of Defense for Military Personnel Policy, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes policy, assigns responsibilities, and prescribes procedures for carrying out the Post-9/11 GI Bill. It establishes policy for the use of supplemental educational assistance (hereafter referred to as “kickers”) for Service members with critical skills or specialties, or for members serving additional service; for authorizing the transferability of education benefits (TEB); and the DoD Office of the Actuary to perform determinations in support of DoD funding responsibilities.

EFFECTIVE DATE: This rule is effective [INSERT 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Robert Clark, (703) 697-9267.

SUPPLEMENTARY INFORMATION:

Executive Summary

I. Purpose of the Regulatory Action

This rule will provide the mechanism to implement the Secretary of Defense authorities with regard to Supplemental Educational Benefits (Kickers) and transferability of educational benefits

to family members to aid recruiting and retention of the Armed Forces under chapter 33 38 U.S.C. chapter 33, and enable the Secretary of Defense to establish policy, assign responsibilities, and prescribe procedures for such authorities.

II. Summary of the Major Provisions of the Regulatory Action In Question

This rule establishes policy, assigns responsibilities, and prescribes procedures for carrying out the Post 9/11 GI Bill, as codified in 38 U.S.C. chapter 33. It establishes policy for the use of supplemental educational assistance “kickers”, for members with critical skills or specialties, or for members serving additional service; for authorizing the transferability of education benefits; and for the DoD Education Benefits Fund Board of Actuaries to perform determinations in support of DoD funding responsibilities for “kickers.”

III. Costs and Benefits

There is no cost to the public. Administrative costs to the Department of Defense for implementation of the authorities under this rule are negligible. Workload will be accomplished with existing staffing and be integrated into normal business. There will be no new costs for supplemental educational assistance, or “kickers”, since the Services will use existing programmed and budgeted resources currently dedicated to Montgomery GI Bill (MGIB) “kickers”. Benefits of “kickers” should parallel those of the existing MGIB “kickers”, which give the Services the ability to channel “high-quality” youth into critical “hard-to-fill” specialties. Transferability of educational benefits to family members will aid recruiting and retention of the Armed Forces.

Public Comments

The Department of Defense published an interim final rule on June 5, 2009 (74 FR 30212-30220) with a request for comments. The following two comments were received:

Comment 1: The Post 9/11 GI Bill does not allow funds to be allocated for advanced flight training. Any training beyond the pilot certificate is considered progressive and career oriented in nature. The airline industry continues to see a decline in the number of future pilots currently in training due to the increase in costs, the immense number of hours required to achieve an Airline Transport Rating, and a decade of low interest in taking up Piloting as a career. As such, allowing Post 9/11 GI Bill funds to be used for pilot training beyond the private pilot certificate would not only energize more soldiers to seek a career in aviation, it will open up the potential for flight schools, future hires, as well as injecting mature career oriented veterans into the airline industry.

Comment 2: When this document was initially introduced, information was obtained from the state of California regarding public universities only and doesn't provide for an opportunity for veterans to utilize benefits that they qualify because the cost of tuition is listed as zero. There are a large majority of public universities and colleges that are no longer accepting applications thereby forcing applicants to apply for private universities. With the tuition listed as zero, no tuition is being paid for veterans in California.

DoD Response to Comments 1 and 2: DoD's final rule is limited to specific DoD roles relating to administration of the Post-9/11 GI Bill. These are the establishment of policy for the use of supplemental educational assistance ("kickers") for Service members with critical skills or specialties, or for members serving additional service; for authorizing the transferability of education benefits (TEB); and the DoD Office of the Actuary to perform determinations in support of DoD funding responsibilities. The two public comments received are outside the scope of this rule and relate specifically to the implementation of the actual Post 9-11 GI Bill benefit, which is implemented by the Department of Veterans Affairs (VA). VA decides how

the GI Bill benefits may be used for aviation school and also implements benefits available for use towards private school tuition (which is about \$18,000 per year now), not DoD.

Regulatory Procedures

Executive Order 12866, “Regulatory Planning and Review” and Executive Order 13563, “Improving Regulation and Regulatory Review”

It has been certified that 32 CFR part 65 does not:

- (1) Have an annual effect on the economy of \$100 million or more or adversely affect in a material way the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;
- (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;
- (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or
- (4) Raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or the principles set forth in these Executive Orders.

Sec. 202, Pub. L. 104-4, “Unfunded Mandates Reform Act”

It has been certified that 32 CFR part 65 does not contain a Federal mandate that may result in expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, “Regulatory Flexibility Act” (5 U.S.C. 601)

It has been certified that 32 CFR part 65 is not subject to the Regulatory Flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities.

Public Law 96-511, “Paperwork Reduction Act” (44 U.S.C. Chapter 35)

It has been certified that 32 CFR part 65 does not impose reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, “Federalism”

It has been certified that 32 CFR part 65 does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of Government.

List of Subjects in 32 CFR Part 65

Armed forces, Education.

Accordingly 32 CFR Part 65 is revised to read as follows:

PART 65– POST-9/11 GI BILL

Sec.

65.1 Purpose.

65.2 Applicability.

65.3 Definitions.

65.4 Policy.

65.5 Responsibilities.

65.6 Procedures.

Authority: 38 U.S.C. chapter 33.

§65.1 Purpose.

This part:

- (a) Establishes policy, assigns responsibilities, and prescribes procedures for implementing DoD authorities and responsibilities for chapter 33 of title 38, United States Code (U.S.C.) (also known and hereafter referred to as “the Post-9/11 GI Bill”)
- (b) Establishes policy for the use of supplemental educational assistance (hereafter referred to as “kickers”) for Service members with critical skills or specialties, or for members serving additional service in accordance with 38 U.S.C. 3316.
- (c) Establishes policy for authorizing the transferability of education benefits (TEB) in accordance with 38 U.S.C. 3319.
- (d) Assigns responsibility to the DoD Office of the Actuary to perform determinations in support of DoD funding responsibilities for 38 U.S.C. chapter 33 in accordance with 10 U.S.C. 183 and 2006.

§65.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard at all times, including when it is a Service in the Department of Homeland Security (DHS) by agreement with that Department), the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereinafter referred to collectively as the “DoD Components”). Section 65.6 of this part also applies to the Commissioned Corps of the Public Health Service (PHS) by agreement with the Surgeon General, and to the National Oceanic and

Atmospheric Administration Commissioned Officer Corps (NOAA Corps) by agreement with the Director, NOAA Corps.

§65.3 Definitions.

Unless otherwise noted, these terms and their definitions are for the purpose of this part:

Active duty. For the Post-9/11 GI Bill, the term “active duty” is defined in 38 U.S.C. 3301(1).

Affiliation kicker. Supplemental educational assistance that may be offered by the Secretary of a Military Department to the monthly amount of educational assistance otherwise payable to an individual pursuant to paragraph (1)(B), or to paragraphs (2) through (7) (as applicable), of 38 U.S.C. 3313(c), to a Service member who is separating honorably from a regular component and who agrees to serve in the Selected Reserve in a skill, specialty, or unit in which there is a critical shortage of personnel or for which it is difficult to recruit and/or retain.

Enlistment kicker. Supplemental educational assistance that may be offered by a Secretary of a Military Department to the monthly amount of educational assistance otherwise payable to an individual pursuant to paragraph (1)(B), or to paragraphs (2) through (7) (as applicable), of 38 U.S.C. 3313(c), who initially enlists in a regular component in a skill or specialty in which there is a critical shortage of personnel or for which it is difficult to recruit.

Family member. A spouse or child as codified in 38 U.S.C. 101 who is enrolled in Defense Eligibility Enrollment Reporting System (DEERS).

Kickers. Supplemental educational assistance that may be offered by a Secretary of a Military Department to the monthly amount of educational assistance otherwise payable to an individual pursuant to paragraph (1)(B), or to paragraphs (2) through (7) (as applicable), of 38 U.S.C. 3313(c).

Reenlistment kicker. Supplemental educational assistance that may be offered by a Secretary of a Military Department to the monthly amount of educational assistance otherwise payable to an individual pursuant to paragraph (1)(B), or to paragraphs (2) through (7) (as applicable), of 38 U.S.C. 3313(c), to a member who, after completing 5 or more years of continuous service, signs an agreement to remain on active duty for a period of at least 2 years.

Secretary Concerned. For a member of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard when it is operating as a Service of the Department of the Navy, the term means the Secretary of the Military Department with jurisdiction over that Service member. For a member of the Coast Guard when the Coast Guard is operating as a Service of the DHS, the term means the Secretary of Homeland Security. For a member of the PHS, the term means the Surgeon General. For a member of the NOAA Corps, the term means the Director, NOAA Corps.

Service member. An individual serving on active duty or in the Selected Reserve. Does not include other members of the Ready Reserve (such as the Individual Ready Reserve, standby Reserve, or retired Service members, unless they are serving on active duty.) For purposes of § 65.6, includes members of the PHS and members of the NOAA Corps.

§65.4 Policy.

It is DoD policy that:

- (a) Kickers may be authorized to assist in the recruitment, reserve affiliation, and retention of individuals into skills or specialties in which there are critical shortages or for which it is difficult to recruit or, in the case of critical units, to retain personnel.
- (b) Transferability of education benefits may be used to promote recruitment and retention.

§65.5 Responsibilities.

(a) The Deputy Assistant Secretary of Defense for Military Personnel Policy (DASD(MPP)), under the authority, direction, and control of the Assistant Secretary of Defense for Readiness and Force Management, shall:

(1) Develop guidance and procedures for implementation and oversight of DoD authorities and responsibilities under the Post-9/11 GI Bill.

(2) Coordinate administrative procedures of the Post-9/11 GI Bill with the Department of Veterans Affairs (VA), and other appropriate DoD and intergovernmental agencies, as applicable.

(3) Review and approve each Military Department plan to use supplemental assistance in accordance with the provisions of 38 U.S.C. 3316.

(4) Establish the standard data elements needed to administer the Post-9/11 GI Bill.

(b) The Under Secretary of Defense (Comptroller) (USD(C))/Chief Financial Officer (CFO) (USD(C)/CFO), Department of Defense shall:

(1) Provide guidance on budgeting, accounting, and funding for the educational benefits program in support of plans established in §65.6, and for investing the available DoD Education Benefits Fund balance.

(2) In coordination with the DASD(MPP), review and approve the Military Department budget estimates for the supplemental payments in accordance with the provisions of 38 U.S.C. 3316.

(c) The Director, Department of Defense Human Resources Activity (DoDHRA), under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness, shall ensure the Director, Defense Manpower Data Center (DMDC) shall:

(1) Replicate Post 9/11 GI Bill eligibility data using the Veterans Affairs and DoD Identity Repository (VADIR) with the DVA as needed and specified.

(i) Maintain personnel information needed by the DVA to determine benefit entitlement.

(ii) Maintain DVA payment and usage data for the Post 9/11 GI Bill program.

(2) [Reserved]

(d) The Secretaries Concerned shall:

(1) Provide implementing guidance within their Department to govern the administration of the Post-9/11 GI Bill consistent with this part and other guidance issued by the DASD(MPP) and the USD(C)/CFO consistent with the needs of the Military Services. This guidance must include Service implementation of kickers and the transfer of unused educational benefits as established in 38 U.S.C. 3319, as outlined in §65.6.

(2) Ensure that all eligible active duty Service members and members of the Reserve Components are aware that they are automatically eligible for Post-9/11 GI Bill educational assistance upon serving the required active duty time as outlined in 38 U.S.C. 3311.

(3) Ensure that all officers without earlier established eligibility, following commissioning through the Service academies (with the exception of the Coast Guard Academy for individuals who enter into an agreement to service before January 4, 2011) or Reserve Officer Training Corps Scholarship Programs consistent with 10 U.S.C. 2107, are aware that their eligible period of active duty for Post-9/11 GI Bill benefits does not begin until they have completed their statutory obligated active duty service. Ensure that such officers are aware that any active duty service after that obligated period of service may qualify as active duty service for Post-9/11 GI Bill eligibility.

- (4) Ensure that all Service members participating in the student loan repayment program in accordance with 10 U.S.C. chapter 109 are aware that their service counted pursuant to 10 U.S.C. chapter 109 does not count as qualifying active duty service for Post-9/11 GI Bill eligibility. Ensure that such Service members are aware that any service after that obligated period of service may qualify as active duty service for Post-9/11 GI Bill eligibility.
- (5) Authorize kickers for recruitment and retention of individuals with critical skills or in programs that are hard to recruit or retain in accordance with 38 U.S.C. 3316, and advise the DASD(MPP) of such approval.
- (6) Budget for and transfer funds to support the kickers, in accordance with § 65.6 of this part and guidance issued by the USD(C)/CFO.
- (7) Ensure pre-separation or release from active duty counseling on Post-9/11 GI Bill benefits to active duty members and members of the Reserve Components with qualifying active duty service and document this counseling accordingly.
- (8) Promulgate guidance for their Service(s) to administer the transferability of unused education entitlements to family members to support recruiting and retention in accordance with § 65.6.
- (9) Ensure maintenance of records for individuals who receive kickers in accordance with 38 U.S.C. 3316. Provide those records to the DMDC and VA.
- (10) Report all qualifying active duty pursuant to DoD Manual 7730.54-M-V1, “Reserve Component Common Personnel Data System (RCCPDS)” (see http://www.dtic.mil/whs/directives/corres/pdf/773054m_vol1.pdf).
- (11) Direct use of DoD standard data elements and codes established by DoD Instruction 1336.05, “Automated Extract of Active Duty Military Personnel Records” (see

<http://www.dtic.mil/whs/directives/corres/pdf/133605p.pdf>) and DoD Manual 7730.54–M when specified.

§65.6 Procedures.

(a) General eligibility. Eligibility and administration of the Post-9/11 GI Bill are the responsibility of the VA. Policies and procedures for utilization of Post-9/11 GI Bill benefits are available from that agency. Those policies and procedures are codified in 38 CFR part 21 and presented and updated at <http://www.gibill.va.gov>.

(b) Kickers. (1) Enlistment kickers. The use of enlistment kickers should be based on the criticality of the skill or the length of enlistment commitment and may be offered in amounts from \$150 to \$950 a month in increments of \$100. Reporting codes for enlistment kickers are listed in DoD Instruction 1336.05 and DoD Manual 7730.54-M-V1.

(2) Affiliation kickers. The use of affiliation kickers shall be based on the criticality of the skill and/or unit and the length of Selected Reserve commitment, and may be offered in amounts from \$150 to \$950 a month in increments of \$100. If an individual is already eligible for an enlistment kicker, the amount of the affiliation kicker is limited to the amount that would take the total to \$950. For those individuals who are offered an affiliation kicker on top of an enlistment kicker, the increases above the enlistment kicker will be in \$100 increments. Reporting codes for affiliation kickers are the same as the codes for enlistment kickers listed in DoD Instruction 1336.05 and DoD Manual 7730.54-M-V1.

(3) Reenlistment kickers. The use of reenlistment kickers should be based on the criticality of the skill and may be offered in amounts from \$100 to \$300 a month in increments of \$100, based on length of additional service. Reporting codes for reenlistment kickers are listed in DoD Instruction 1336.05 and DoD Manual 7730.54-M-V1.

(4) Payment of kickers. Kickers are paid by VA in conjunction with the monthly stipend paid pursuant to 38 U.S.C. 3313(c).

(c) Transferability of unused education benefits to family members. Subject to the provisions of this section, the Secretary Concerned, to promote recruitment and retention in the Uniformed Services, may permit an individual eligible for Post-9/11 GI Bill educational assistance to elect to transfer to one or more of his or her family members all or a portion of his or her entitlement to such assistance (see paragraphs (c)(1) and (c)(2) of this section).

(1) Eligible individuals. Any Service member on or after August 1, 2009, who is entitled to the Post-9/11 GI Bill at the time of the approval of his or her request to transfer that entitlement under this section, may transfer that entitlement provided he or she meets one of these conditions:

(i) Has at least 6 years of service in the Military Services (active duty or Selected Reserve), NOAA Corps, or PHS on the date of approval and agrees to serve 4 additional years in the Military Services, NOAA Corps, or PHS from the date of election.

(ii) Has at least 10 years of service in the Military Services (active duty or Selected Reserve), NOAA Corps, or PHS on the date of approval, is precluded by either standard policy (Service or DoD) or statute from committing to 4 additional years, and agrees to serve for the maximum amount of time allowed by such policy or statute.

(iii) Is or becomes retirement eligible during the period from August 1, 2009, through July 31, 2012, and agrees to serve the additional period, if any, specified in paragraphs (c)(1)(iii)(A) through (c)(1)(iii)(D) of this section. A Service member is considered to be retirement eligible if he or she has completed 20 years of active Federal service or 20 qualifying years as computed pursuant to 10 U.S.C. 12732. This paragraph will no longer be in effect on August 1, 2013, and

on or after that date all members must comply with paragraphs (c)(1)(i) or (c)(1)(ii) of this section to be eligible for transfer of unused education benefits to family members.

(A) For individuals eligible for retirement on August 1, 2009, no additional service is required.

(B) For individuals eligible for retirement after August 1, 2009, and before August 1, 2010, 1 year of additional service is required.

(C) For individuals eligible for retirement on or after August 1, 2010, and before August 1, 2011, 2 years of additional service is required.

(D) For individuals eligible for retirement on or after August 1, 2011, and before August 1, 2012, 3 years of additional service is required.

(iv) The provisions of paragraph (c)(1)(iii) of this section will apply to Service members recalled to active duty under the provisions of 10 U.S.C. 688 or members of the Individual Ready Reserve ordered to active duty under the provisions of 10 U.S.C. 12301(d) only when the active duty is for a period of at least 90 days.

(2) Eligible family members. (i) An individual approved to transfer an entitlement to educational assistance under this section may transfer that entitlement to his or her spouse, to one or more of his or her children, or to a combination of his or her spouse and one or more children.

(ii) For purposes of this provision, the definition of spouse and child are as codified in 38 U.S.C. 101. Confirmation of family members will be made using the DEERS.

(iii) Once an individual has designated a child as a transferee, a child's subsequent marriage will not affect his or her eligibility to receive the educational benefit; however, the individual retains the right to revoke or modify the transfer at any time.

(iv) Once an individual has designated a spouse as a transferee, subsequent divorce will not affect the transferee's eligibility to receive educational benefits; however, the eligible individual retains the right to revoke or modify the transfer at any time.

(3) Months of transfer. Months transferred must be whole months. The number of months of benefits transferred by an individual under this section may not exceed the lesser of:

(i) The months of Post-9/11 GI Bill unused benefits available.

(ii) 36 months.

(4) Transferee usage. (i) Policies and procedures for family member use of Post-9/11 GI Bill transferred educational benefits are the responsibility of the VA. Those policies and procedures are codified in 38 CFR part 21 and presented and updated at <http://www.gibill.va.gov>.

(ii) Commencement of use by a family member is subject to these conditions:

(A) A spouse may start to use the benefit only after the individual making the transfer has completed at least 6 years of service in the Military Services, NOAA Corps, or PHS.

(B) A child may start to use the benefit after the individual making the transfer:

(1) Has completed at least 10 years of service in the Military Services, NOAA Corps, or PHS, or

(2) Is separated for one of the reasons referred to in paragraph (c)(7)(ii) or (c)(7)(iii) of this section.

(5) Designation of transferee. An individual transferring an entitlement to educational assistance under this section shall, through notification to the Secretary Concerned as specified in paragraph (c)(9) of this section:

(i) Designate the family member or members to whom such entitlement is being transferred.

(ii) Designate the number of months of such entitlement to be transferred to each family member.

(iii) Specify the period for which the transfer shall be effective for each family member. The effective period must be on or after the date of designation.

(6) Time for transfer, revocation, and modification. (i) Time for transfer. An individual approved to transfer entitlement to educational assistance under this section may transfer such entitlement to the individual's family member only while serving in the Military Services (active duty or Selected Reserve.), NOAA Corps, or PHS. An individual may not add family members after retirement or separation from the Uniformed Services.

(ii) Modification or revocation. (A) An individual transferring entitlement in accordance with this section may modify or revoke at any time the transfer of any unused portion of the entitlement so transferred.

(1) An individual may add new family members, modify the number of months of the transferred entitlement for existing family members, or revoke transfer of entitlement while serving in the Uniformed Services.

(2) An individual may not add family members after retirement or separation from the Military Services, NOAA Corps, or PHS, but may modify the number of months of the transferred entitlement or revoke transfer of entitlement after retirement or separation for those family members who have received transferred benefits prior to separation or retirement.

(B) The modification or revocation of the transfer of entitlement shall be made by submitting notice of the action to both the Secretary of the Military Department concerned and the Secretary of Veterans Affairs. Additions, modifications, or revocations made while in the Military Services, NOAA Corps, or PHS will be made through the TEB Website as described in paragraph (c)(8) of this section. Modifications or revocations after separation from the Military Services, NOAA Corps, or PHS will be accomplished through VA.

(7) Failure to complete service agreement. (i) Except as provided in this section, if an individual transferring entitlement under this section fails to complete the service agreed to consistent with paragraph (c)(1) of this section in accordance with the terms of the agreement, the amount of any transferred entitlement that is used as of the date of such failure shall be treated as an overpayment of educational assistance and shall be subject to collection by VA.

(ii) Paragraph (c)(7)(i) of this section shall not apply to an individual who fails to complete service agreement due to:

(A) His or her death.

(B) Discharge or release from active duty or the Selected Reserve for a medical condition that pre-existed his or her service and was not service-connected.

(C) Discharge or release from active duty or the Selected Reserve for hardship as determined by the Secretary of the Military Department concerned.

(D) Discharge or release from active duty or the Selected Reserve for a physical or mental condition, not a disability, that did not result from his or her willful misconduct, but did interfere with the performance of duty.

(iii) The transferor is also considered to have completed his or her service agreement as a result of being discharged for a disability or a reduction in force or force shaping.

(iv) The Secretaries of the Military Departments may promulgate guidance regarding waiver of the military service obligation agreed to consistent with paragraph (c)(1) of this section if the individual revokes all transfers and no benefits have been used.

(8) Procedures. All requests and transactions for individuals who remain in the Uniformed Services will be completed through the TEB Web application at

<https://www.dmdc.osd.mil/milconnect/>. The TEB Users Manual, maintained on that site, will provide instruction for enrollment; verification; and additions, changes, and revocations. Modifications or revocations after separation from the Uniformed Services will be accomplished through VA.

(9) Regulations. The Secretaries of the Military Departments shall promulgate guidance to administer the transferability of unused education entitlements to family members in accordance with this part. Such guidance shall specify:

- (i) The manner of verifying and documenting the additional service commitment, if any, consistent with paragraph (c)(1) of this section, to be authorized to transfer education benefits.
- (ii) The manner of determining eligibility to authorize the transfer of education benefits as allowed in paragraphs (c)(1)(i), (c)(1)(ii), or (c)(1)(iii) of this section.

DATED: May 31, 2013.

PATRICIA L. TOPPINGS

OSD Federal Register Liaison Officer

Department of Defense

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